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**COMMENTS OF THE
AMERICAN PUBLIC POWER ASSOCIATION**

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)
)
Plan for Sharing the Costs of) WT Docket No. 95-157
Relocation)

To: The Commission

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

**COMMENTS OF THE
AMERICAN PUBLIC POWER ASSOCIATION**

Pursuant to Section 1.415 of the Federal Communication Commission's (FCC) Rules, the American Public Power Association (APPA) hereby respectfully submits its comments on the Notice of Proposed Rule Making (NPRM), FCC 95-157, released November 1, 1995, in the above-captioned proceeding.

I. Introduction

APPA is the national service organization representing the interests of approximately 2,000 consumer-owned, not-for-profit electric utility systems throughout the United States. APPA has been an active participant in the Commission's rulemaking process for relocation of incumbent 2 GHz microwave users to provide spectrum for emerging technology services. The Commission's most recent NPRM, the subject of the above-captioned proceeding, addresses issues of significant concern to our member systems that operate 2 GHz communications systems.

Over 50 publicly owned electric utilities operate fixed microwave systems in the 1.85-1.99, 2.13-2.15, and 2.18-2.20 GHz (2 GHz) bands. These systems are listed in Attachment A. Their facilities range in size and complexity from simple, one-path analog systems to multichannel digital systems spanning more than 900 total miles.

APPA members use these facilities for real-time control, monitoring, and dispatch of electric generation and transmission facilities, as well as long- and medium-haul remote data

and voice communications. Typical usage would include: (1) remotely detecting, isolating and clearing fault conditions on high-power transmission lines within milliseconds, thereby preventing blackouts and loss of lives and property; (2) bringing nuclear, thermal and hydroelectric generation stations on- and off-line to instantaneously match system capacity with demand; (3) forwarding critical telemetry data between and among a utility's substations, operations control centers, generation stations and other utilities; and (4) controlling mobile radio base stations and other radio systems used for load control, environmental monitoring and nuclear plant operations.

Nearly 800,000 megawatts of generating capacity in North America is controlled by this communications network, which relies heavily on microwave facilities in the 2 GHz band. While not all electric utilities have microwave systems in this band, the interconnected nature of the national electric grid makes each communication link, regardless of which utility operates it, critical to the operation of the entire grid. Reliability of the communications network used for these purposes is essential to the continued safe operation of this grid.

Pursuant to the Energy Policy Act of 1992, the Federal Energy Regulatory Commission has taken action to open the national electricity transmission system to wholesale suppliers by allowing "wheeling." Wheeling involves the use of this grid to move power generated at one location to a utility that is not directly tied to the generation source by its own transmission system. It is designed to promote electric utilities' access to cheaper sources of wholesale power.

As the use of wheeling increases, the reliability of the communications network which ties the grid together will become even more critical. In the future, this communications infrastructure will not only have to be maintained, it will have to be improved. Failure to do so would threaten the public health and safety.

II. The Proposed Relocation Guidelines Would Impede Market-Based Negotiations

In the NPRM, the Commission sets forth a proposed plan for sharing the costs of microwave relocation among new licensees. In addition, the Commission seeks comment on

whether to “clarify” a number of its microwave relocation rules. These proposed “clarifications” address some of the fundamental issues involved in the relocation process.

In the current proceeding, APPA has reviewed the Comments of UTC, the Telecommunications Association, and agrees with the principles set forth therein. We urge the Commission to give them prompt and favorable consideration.

In particular, APPA shares UTC’s strong opposition to the Commission’s proposal to create a rebuttable presumption of bad faith on the part of any incumbent 2 GHz user that fails to accept an offer of relocation to “comparable facilities.” While the Commission’s NPRM generally describes the required elements of “comparable facilities,” the definition remains subject to varying interpretations.

Given this level of uncertainty, it would be incorrect and unjust to assume bad faith on the part of a 2 GHz incumbent (potentially subjecting it to penalties) for simply disagreeing with the emerging technology licensee’s definition of “comparable facilities.” Further, the NPRM would seriously undermine market-based negotiations by creating significant pressure for an incumbent 2 GHz user to accept any offer by a new licensee. At a minimum, if this provision is ultimately retained, the Commission should create a similar presumption of bad faith on the part of an emerging technology licensee that fails to accept an incumbent 2 GHz user’s offer to relocate to what it defines as “comparable facilities.”

In general, APPA supports the factors that the Commission has included in its broad definition of “comparable facilities,” and we certainly agree that “the current negotiation process is the most appropriate means for determining comparability of the existing and replacement facilities.” However, APPA remains concerned that an emerging technology licensee may have the opportunity to “pick and choose” among the elements of comparability set forth in the NPRM. Instead of allowing new licensees to emphasize characteristics that are most favorable to their own pecuniary interest, we believe incumbent users are best equipped to define their systems’ operating needs.

With respect to the balance of the NPRM, APPA will limit the remainder of its individual Comments to the proposed redesignation of 2 GHz incumbents to secondary status after ten years and the Commission's Initial Regulatory Flexibility Analysis (IRFA).

III. Imposing Secondary Status After Ten Years Will Force Involuntary Relocation Without Compensation

In the NPRM, the Commission states that "microwave incumbents should not retain primary status indefinitely on spectrum licensed for emerging technology services" and proposes to relegate microwave incumbents that are still operating in the 2 GHz band on April 4, 2005 to secondary status. The Commission concludes that this date "provides adequate time for completion of microwave relocation."

In fact, adoption of such a proposal would directly contradict the Commission's stated objective in the *First Report and Order and Third Notice of Proposed Rule Making*, ET Docket No. 92-9, 57 F.R. 49020 (October 29, 1992) ("*ET First Report and Order*"). In the *ET First Report and Order*, the Commission clearly expressed its intent that, in the case of an involuntary relocation of a 2 GHz microwave incumbent, the emerging technology service provider will be responsible for paying the costs of relocating the incumbent to a "comparable" facility.

By relegating utilities' communication systems to secondary status after ten years, the NPRM would force these incumbents to relocate to another frequency at their own expense, contrary to the Commission's stated policy.

A. Utilities' Communications Systems Cannot Operate Effectively under Secondary Status

To ensure public safety, communications for electric utility operations systems must meet demanding conditions for reliability and real-time control of the electric grid. Electric utilities must have instantaneous communications capability for their system command, control and monitoring systems. The probability of a catastrophic power system failure increases dramatically as the delay in fault-clearing increases. Such a delay can lead to widespread blackouts, injury and loss of life.

To maintain continuous electric service for the nation's consumers, utilities must also have continuous access to their system command, control and monitoring systems. Service restoration priorities of electric utilities are based on human safety and plant protection considerations. The utility is ultimately responsible for ensuring safety and mitigation of losses during outages.

By arbitrarily relegating utilities' communications systems to secondary status after ten years, the NPRM would reduce the reliability of these systems to a level at which it would be extremely difficult to operate safely or reliably. Once primary status is revoked, a utility will be required to shut down its communications system whenever it causes interference with the primary licensee. To continue operations, utilities would be forced to relocate their existing 2 GHz communications systems to another frequency at their own expense. In reality, therefore, adoption of the NPRM is the regulatory equivalent of clearing incumbent microwave licensees from the 2 GHz bands.

B. Forced Relocation Without Compensation Would Impose an Unfair Economic Burden on 2 GHz Incumbents

APPA takes particular exception to the Commission's assertion in the NPRM that a ten year time limit "provides adequate time for completion of microwave relocation." Under the Commission's current and proposed rules for microwave relocation, no mechanism exists to allow a 2 GHz incumbent to compel negotiations with an emerging technology licensee. Instead, the rules allow a new licensee to determine when, if ever, it will initiate the one-year mandatory negotiation period.

In this situation, a ten-year time limit for primary status would create a strong financial incentive for emerging technology licensees to avoid negotiations altogether. Through this loophole, a licensee could simply wait until the incumbent 2 GHz user is downgraded to secondary status and is forced to relocate without compensation.

The inequity of this proposal is further compounded by the fact that primary status would be revoked regardless of whether an emerging technology service has been, or ever will

be, deployed in the area. The Puerto Rico Electric Power Authority, the Navajo Tribal Utility Authority in Arizona and the Farmington, New Mexico Electric Utility System -- to cite only a few examples -- all operate microwave links in the 2 GHz bands that might never pose a problem to emerging technologies.

The potential cost impact of this proposal on non-profit 2 GHz incumbent utilities, and those of their customers, is sizable. In this situation, they should not be forced to absorb the costs of relocating their 2 GHz communications systems without even the opportunity to negotiate with an emerging technology licensee. If the Commission's proposal to impose a ten-year time limit for primary status is adopted, therefore, it must first be modified to ensure that incumbent users in the 2 GHz band are able to compel good faith negotiations with a new licensee prior to revocation of primary status.

IV. The Practical Effect of the NPRM Would Be Inconsistent with the Objectives Cited in the Initial Regulatory Flexibility Analysis

In its Initial Regulatory Flexibility Analysis (IRFA), the Commission states that it is "committed to ensuring that the incumbents' services are not disrupted and that the economic impact of this proceeding on the incumbents is minimal." The Commission also recognizes that "not all of the incumbent licensees are large businesses ... and that many of the licensees are local government entities that are not funded through rate regulation."

Unfortunately, the actual effect of the Commission's NPRM would be completely inconsistent with these stated objectives. As outlined above, APPA has serious concerns about the financial consequences of the NPRM for its members. Without any opportunity to compel an emerging technology licensee to negotiate, these incumbent users will be forced to relocate their 2 GHz communications systems at their own expense after ten years.

This "unfunded mandate" would have a particularly severe impact on the limited budgets of smaller public utility systems, such as Chillicothe Municipal Utilities in Chillicothe, Missouri, which serves approximately 4,600 customers, and Thomasville Water & Light Department in Thomasville, Georgia, which serves about 15,500 customers. These non-profit

systems can scarcely afford to shoulder the financial burden of relocation, and neither they nor their customers should be asked to do so based on the mere possibility that an emerging technology service may be deployed at some point in the future.

V. Conclusion

Operating electrical transmission and distribution systems at reduced reliability is simply not an option for electric utilities. Therefore, imposition of secondary status will force the involuntary relocation of these incumbents' communications systems to other frequencies or other media at substantial and unjustifiable expense to electric consumers. In effect, the NPRM would cause the *de facto* clearing of microwave incumbents from the 2 GHz bands.


In addition, an arbitrary ten-year time limit for primary status directly contradicts the Commission's stated intent of ensuring full compensation for 2 GHz incumbents who are subjected to involuntary relocation. It is patently unfair to downgrade utilities' communications systems to secondary status without first ensuring them the opportunity to engage in good faith negotiations.

For these reasons, the Commission should reject the proposal to impose secondary status on remaining 2 GHz incumbents after ten years and maintain its policy of requiring complete compensation for the costs of incumbent relocation by emerging technology service providers. If the ten-year time limit for primary status is adopted, the Commission should further modify its rules to ensure that 2 GHz incumbents can compel negotiations with an emerging technology licensee before primary status is revoked.

WHEREFORE, THE PREMISES CONSIDERED, the American Public Power Association respectfully requests the Commission to consider these Comments and take actions consistent with the views expressed herein.

Respectfully submitted,

AMERICAN PUBLIC POWER ASSOCIATION

By: 

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November 30, 1995

ATTACHMENT A

APPA Member Systems Operating Fixed Microwave Systems in the 2 GHz Bands

<u>System</u>	<u>City</u>	<u>State/Province</u>
Riviera Utilities	Foley	Alabama
Navajo Tribal Utility Authority	Fort Defiance	Arizona
Salt River Project	Phoenix	Arizona
Los Angeles Dept. of Water and Power	Los Angeles	California
East Bay Municipal Utility District	Oakland	California
Sacramento Municipal Utility District	Sacramento	California
Tri-Dam Power Authority	Pinecrest	California
Turlock Irrigation District	Turlock	California
Western Area Power Administration	Golden	Colorado
Gainesville Regional Utilities	Gainesville	Florida
Jacksonville Electric Authority	Jacksonville	Florida
Orlando Utilities Commission	Orlando	Florida
City of Tallahassee	Tallahassee	Florida
Thomasville Water & Light Department	Thomasville	Georgia
Lafayette Utilities System	Lafayette	Louisiana
Chillicothe Municipal Utilities	Chillicothe	Missouri
Farmington City Light & Power	Farmington	Missouri
Nebraska Public Power District	Columbus	Nebraska
Central Nebraska Public Power	Holdrege	Nebraska
Lincoln Electric System	Lincoln	Nebraska
Omaha Public Power District	Omaha	Nebraska
Farmington Electric Utility System	Farmington	New Mexico
Los Alamos County Utilities	Los Alamos	New Mexico
New York Power Authority	New York	New York
Southwestern Power Administration	Tulsa	Oklahoma
Grand River Dam Authority	Vinita	Oklahoma
Municipal Electric Association of Ontario	Toronto	Ontario
Bonneville Power Administration	Portland	Oregon
Central Lincoln Public Utility District	Newport	Oregon
Puerto Rico Electric Power Authority	San Juan	Puerto Rico
South Carolina Public Service Authority	Moncks Corner	South Carolina
East River Electric Power Co-operative	Madison	South Dakota
Heartland Consumers Power District	Madison	South Dakota
Chattanooga Electric Power Board	Chattanooga	Tennessee
Tennessee Valley Authority	Knoxville	Tennessee
Memphis Light, Gas & Water Division	Memphis	Tennessee
Austin Electric Utility Department	Austin	Texas
Lower Colorado River Authority	Austin	Texas
Texas Municipal Power Agency	Bryan	Texas
City Public Service	San Antonio	Texas
Guadalupe-Blanco River Authority	Seguin	Texas
Murray City Power Department	Murray	Utah
Grant County Public Utility District No. 2	Ephrata	Washington
Snohomish County Public Utility District No. 1	Everett	Washington
Washington Public Power Supply System	Richland	Washington
Seattle City Light	Seattle	Washington
Tacoma Public Utilities	Tacoma	Washington
Chelan County Public Utility District No. 1	Wenatchee	Washington

CERTIFICATE OF SERVICE

I, M. Todd Tuten, Esq., on behalf of the American Public Power Association (APPA), hereby certify that I have caused to be sent, by hand-delivery, on this 30th day of November 1995, a copy of the foregoing to each of the following individuals:

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M. St., N.W., Room 814
Washington, D.C. 20036

The Honorable James H. Quello
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Federal Communications Commission
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